

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Real Estate
Appraiser's License of Jeffrey D.
Gruhot,
License No. 20537051

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

This matter came on for a prehearing conference before Administrative Law Judge Kathleen D. Sheehy on October 15, 2009, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota.

Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101-2130, appeared on behalf of the Minnesota Department of Commerce (Department). Jeffrey D. Gruhot (Respondent) did not appear in person or by counsel. The record closed receipt of the Affidavit of Jean-Anne Gates on October 20, 2009.

STATEMENT OF ISSUES

Is the Respondent's real estate appraiser's license subject to discipline because:

1. The Respondent failed to respond to the Department's requests for information, in violation of Minn. Stat. § 45.027, subd. 1a (2008);
2. The Respondent failed to make adjustments reflecting the market's reaction to the differences between the subject property and comparable sales, in violation of Minn. R. 2808.6000, subp. 3A(6); and
3. The Respondent failed to analyze market acceptance, in violation of the Uniform Standards of Professional Appraisal Practice (USPAP) Competency Rule and USPAP Standard Rule 1-1(a)(2008).¹

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

¹ All references to Minnesota Statutes are to the 2008 edition; all references to Minnesota Rules are to the 2007 edition.

FINDINGS OF FACT

1. On September 8, 2009, the Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges (Notice and Order for Hearing) was sent via first class mail to Jeffrey Gruhot at his last known address.² The Notice and Order for Hearing scheduled a prehearing conference to take place on October 15, 2009.

2. The Notice and Order for Hearing contained the following notice:

Respondent's failure to appear at the prehearing conference or hearing may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.³

3. The Notice and Order for Hearing also provided that Respondent must show cause why his real property appraisal license, No. 20537051, should not be revoked or suspended and why he should not be subject to a civil penalty, as provided in Minn. Stat. § 45.027, subd. 6 (2008).⁴

4. On October 15, 2009, the Respondent failed to appear at the prehearing conference or have an appearance made on his behalf. The Respondent did not contact the Administrative Law Judge prior to the hearing to request a different date or time.

5. The Respondent is in default because he failed to appear at the prehearing conference. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice and Order for Hearing are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against the Respondent under Minn. Stat. §§ 45.027, subd. 1, 45.024, and 14.50.

2. Respondent received due, proper, and timely notice of the charges against him, and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

² Affidavit of Jean-Anne Gates (Oct. 19, 2009).

³ Notice and Order for Hearing at 5.

⁴ Notice and Order for Hearing at 2.

3. The Department has complied with all relevant procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. A default occurs when a party fails to appear without the prior consent of the judge at a prehearing conference, settlement conference, or hearing. On default, the allegations and the issues set out in that Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. The Respondent is in default as a result of his failure, without the prior consent of the Administrative Law Judge, to appear at the prehearing conference.

6. If a license lapses, is surrendered, withdrawn, terminated, or otherwise becomes ineffective, the commissioner may institute a proceeding under Minn. Stat. § 45.027, subd. 11, within two years after the license was last effective and enter a revocation or suspension order as of the last date on which the license was in effect, or impose a civil penalty.

7. The Commissioner may take adverse action against the Respondent's license, which expired on August 31, 2008.

8. A licensee shall comply with requests for information, documents, or other requests from the department within the time specified in the request, or, if no time is specified, within 30 days of the mailing of the request by the Department.⁵

9. The Respondent failed to comply with the Department's requests for work file information about an appraisal he performed in Carver, Minnesota, in violation of Minn. Stat. § 45.027, subd. 1a.

10. The license of a licensed real estate appraiser may be denied, revoked, or suspended, or the person may be otherwise disciplined for violating standards of professional practice or for engaging in acts prohibited by rule.⁶ "Standards of professional practice" means, in relevant part, the uniform standards of professional appraisal practice (USPAP) of the Appraisers Standards Board of the Appraisal Foundation.⁷

11. An appraiser must not knowingly use adjustments to the comparable sales that do not reflect the market's reaction to the differences between the

⁵ Minn. Stat. § 45.027, subd. 1a (2008).

⁶ Minn. Stat. § 82B.20, subd. 1; *id.*, subd. 2(13); *id.*, subd. 2(17).

⁷ Minn. Stat. § 82B.02, subd. 12; Minn. R. 2808.6000, subp. 1.

subject property and the comparables, or fail to make adjustments when they are clearly indicated.⁸

12. The Respondent failed to make clearly indicated adjustments reflecting the market's reaction to differences between the age, location, condition, quality, and the lack of a garage of the subject property and comparable sales in Carver, Minnesota.

13. The USPAP Competency Rule provides that, prior to accepting an assignment or entering into an agreement to perform any assignment, an appraiser must properly identify the problem to be addressed and have the knowledge and experience to complete the assignment competently. In the alternative, the appraiser must disclose the lack of knowledge and/or experience to the client before accepting the assignment; take all steps necessary or appropriate to complete the assignment competently; and describe the lack of knowledge and/or experience and the steps taken to complete the assignment competently in the report.

14. USPAP Standards Rule 1-1(a) (2008) provides that in developing a real property appraisal, an appraiser must be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal.

15. The Respondent failed to competently analyze market acceptance of a subject property in Carver, Minnesota, in violation of the USPAP Competency Rule and USPAP Standard Rule 1-1(a) (2008).

16. Disciplinary action against the Respondent's license is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of Commerce take adverse action against the Respondent's real estate appraiser's license.

Dated: October 22, 2009.

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Default (not recorded)

⁸ Minn. R. 2808.6000, subp. 3 A(6).

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Emmanuel Munson-Regala, Deputy Commissioner, Market Assurance Division, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes. To comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.